

Message Text

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R 091745Z AUG 77
FM SECSTATE WASHDC
TO AMEMBASSY OSLO
INFO AMEMBASSY STOCKHOLM
AMEMBASSY COPENHAGEN
AMEMBASSY LONDON
AMEMBASSY THE HAGUE
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AMEMBASSY ROME
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TAGS:EWWT, ETRN, ETRD, XG

SUBJECT:USE OF U.S. VESSELS IN DEEP SEABED MINING
ACTIVITIES

REF: OSLO 3545

1. S.2053 (DEEP SEABED MINERAL RESOURCES ACT) AS INTRO-
DUCED ON AUGUST 5 BY SENATOR METCALF (D-MONT.) DOES IN
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FACT HAVE A TRANSPORTATION PROVISION WHICH REQUIRES THAT:
QUOTE--

NO PERMITTEE (U.S. CITIZEN WHO HAS A LICENSE TO ENGAGE IN
COMMERCIAL RECOVERY) MAY USE ANY VESSEL FOR THE ACTUAL
RECOVERY OR TRANSPORTATION OF HARD MINERAL RESOURCES
UNLESS THE VESSEL IS DOCUMENTED UNDER THE LAWS OF THE

UNITED STATES.

A PERMITTEE SHALL PROCESS HARD MINERAL RESOURCES RECOVERED BY HIM PURSUANT TO A PERMIT ONLY AT PLACES LOCATED IN THE UNITED STATES OR ABOARD VESSELS DOCUMENTED UNDER THE LAWS OF THE UNITED STATES: PROVIDED, THAT THE SECRETARY MAY ALLOW THE PROCESSING OF ANY SUCH RESOURCE ABOARD A FOREIGN VESSEL OR AT A PLACE OTHER THAN IN THE UNITED STATES IF HE FINDS, AFTER OPPORTUNITY FOR AN AGENCY HEARING, THAT --

(A) THE PROCESSING OF THE QUANTITY CONCERNED OF THE RESOURCE AT A FOREIGN LOCATION OR ABOARD A FOREIGN VESSEL IS NECESSARY FOR THE ECONOMIC VIABILITY OF THE COMMERCIAL RECOVERY ACTIVITIES OF THE PERMITTEE; AND

(B) SATISFACTORY ASSURANCES HAVE BEEN GIVEN BY THE PERMITTEE THAT SUCH RESOURCE, AFTER PROCESSING, WILL BE RETURNED TO THE UNITED STATES FOR DOMESTIC USE IF THE SECRETARY SO REQUIRES AFTER DETERMINING THAT THE NATIONAL INTEREST NECESSITATES SUCH RETURN. UNQUOTE.

FYI: SENATE STAFF HAS INFORMED DEPARTMENT THAT METCALF WILL PROBABLY NOT INSIST ON U.S.-FLAG REQUIREMENTS FOR TRANSPORTATION. END FYI. THE HEARINGS ON THE METCALF BILL ARE NOW SCHEDULED FOR SEPT. 19-20.

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2. IN A SOMEWHAT RELATED ACTION, REPRESENTATIVES OF THE GOVERNMENTS OF BELGIUM, DENMARK, THE REPUBLIC OF GERMANY, GREECE, ITALY, THE NETHERLANDS, NORWAY, SWEDEN, AND THE UK DELIVERED TO THE DEPARTMENT ON JULY 29 AN AIDE-MEMOIRE WHICH ADDRESSED H.R.3350 (DEEP SEABED MINERAL RESOURCES ACT), A BILL WHICH WAS INTRODUCED ON FEBRUARY 9 BY REPRESENTATIVES MURPHY AND BREAUX. THE AIDE-MEMOIRE IS QUOTED HEREIN FOR YOUR INFORMATION:

QUOTE:

THE ABOVE-MENTIONED GOVERNMENTS WISH TO EXPRESS THEIR CONCERN AT THOSE PROVISIONS OF THE BILL WHICH REQUIRE HOLDERS OF U.S. MINING PERMITS TO TRANSPORT THE OUTPUT FROM A DEEP SEA MINING SITE TO THE UNITED STATES ABOARD U.S. DOCUMENTED VESSELS. THE ABOVE-MENTIONED GOVERNMENTS WISH TO RECORD THEIR OPPOSITION TO SUCH RESTRICTIVE PROVISIONS, FOR THE FOLLOWING REASONS:

(1) IT IS UNDESIRABLE TO PLACE RESTRICTIONS ON THE NATIONALITY OF VESSELS WHICH MAY BE USED TO TRANSPORT THE OUTPUT FROM DEEP SEA MINING SITES. SUCH PROVISIONS ARE LIKELY TO IMPAIR THE EFFICIENCY OF SUCH TRANSPORTA-

TION, ADD GREATLY TO ITS COST, AND BE INCONSISTENT WITH THE INTERNATIONAL CHARACTER OF DEEP SEA MINING CONSORTIA: THESE PROVISIONS ARE ALSO INCONSISTENT WITH OTHERS IN THE BILL WHICH ENVISAGE THE POSSIBILITY OF RECIPROCATING WITH ANY GOVERNMENT THAT MIGHT INTRODUCE SIMILAR LEGISLATION.

(2) PASSAGE OF THE BILL WOULD REPRESENT AN UNWARRANTED ATTEMPT BY THE UNITED STATES TO EXTEND ITS TERRITORIAL JURISDICTION BY APPLYING WHAT WOULD IN EFFECT BE A CABOTAGE LAW TO DEEP SEA MINING SITES. THE ABOVE-

MENTIONED GOVERNMENTS WISH TO RECORD THEIR OPPOSITION TO SUCH JURISDICTIONAL CLAIMS, WHICH WOULD HAVE A LIMITED OFFICIAL USE

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PREJUDICIAL EFFECT UPON INTERNATIONAL TRANSPORTATION, PARTICULARLY WHEN THE REGIME WHICH SHOULD GOVERN DEEP SEA MINING IS UNDER DISCUSSION IN THE U.N. LAW OF THE SEA CONFERENCE. UNQUOTE.

3. THE SPECIFIC PROVISION OF H.R.3350 WHICH IS THE SOURCE OF DISCONTENT IS FOUND IN TITLE I--SECTION 103 WHICH PROVIDES THAT QUOTE NO PERMITTEE (U.S. CITIZEN WHO HAS A LICENSE TO ENGAGE IN COMMERCIAL RECOVERY) MAY USE ANY VESSEL FOR THE TRANSPORTATION OF HARD MINERALS UNLESS THE VESSEL IS DOCUMENTED UNDER THE LAWS OF THE UNITED STATES. UNQUOTE.

4. HOWEVER, IN THE HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE MARK-UP DURING WEEK OF AUGUST 1 OF H.R.3350, THE ABOVE PROVISION WAS CHANGED TO READ QUOTE NO PERMITTEE MAY USE ANY VESSEL FOR THE ACTUAL COMMERCIAL RECOVERY OF HARD MINERAL RESOURCES OR FOR THEIR PROCESSING AT SEA PURSUANT TO A PERMIT UNLESS THE VESSEL IS DOCUMENTED UNDER THE LAWS OF THE UNITED STATES. UNQUOTE.

5. THE ACTION BY THE COMMITTEE IN MARK-UP WAS REFLECTED IN THE DEPARTMENT'S ANSWER TO THE AIDE-MEMOIRE WHEREIN IT WAS NOTED THAT THIS MARK-UP MAKES IT LESS LIKELY THAT THE VERSION OF H.R.3350 TO BE CONSIDERED BY THE FULL HOUSE WILL CONTAIN ANY PROVISIONS RESTRICTING TRANSPORTATION TO U.S.-FLAG. THE CONCLUDING PARAGRAPH TO THE AIDE-MEMOIRE STATED QUOTE FURTHERMORE, THE UNITED STATES GOVERNMENT IS CURRENTLY UNDERTAKING A COMPREHENSIVE INTERAGENCY REVIEW OF THE DESIRABILITY OF SEABED LEGISLATION WHICH INCLUDES PROVISIONS FOR USE OF U.S.-FLAG OR U.S.-FLAG/U.S.-BUILT VESSELS. IT IS ANTICIPATED THAT THIS REVIEW WILL BE COMPLETED IN THE NEAR FUTURE. LIMITED OFFICIAL USE

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IN CONDUCTING THIS REVIEW, THE USG WILL GIVE CAREFUL
CONSIDERATION TO THE VIEWS EXPRESSED IN THE JULY 29
AIDE-MEMOIRE. UNQUOTE.

5. CONCLUSION: WHILE THE LANGUAGE OF THE MARKED-UP
VERSION OF H.R.3350 WOULD SEEM TO REMOVE THE OBJECTIONS
AS STATED IN THE AIDE-MEMOIRE, IT IS NOT POSSIBLE AT
THIS JUNCTURE TO PREDICT WHAT THE FINAL VERSION OF THE
TRANSPORTATION PROVISIONS OF ANY DEEP SEABED LEGISLATION
WILL BE. THIS IS BECAUSE IT IS NOT CLEAR HOW THE HOUSE
AND SENATE WILL FINALLY ACT ON H.R.3350 AND S.2053,
RESPECTIVELY. CHRISTOPHER

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